

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 13902 of 2003

Between:

K.Chatterjee s/o. K.Venkateswarlu,
H.No.64-4-4/A, Near Water Tank,
Pratap Nagar, Kakinada, East Godvari District.

..... PETITIONER

AND

The Chief Executive officer Zilla Parishad, Kakinada, East Godavari District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any writ, order or direction more particularly one in the nature of writ of certiorari calling for the records from the A.P. Administrative Tribunal at Hyderabad in O.A.No.1467 of 2000 and quash the order of the Tribunal dated 17-3-2003 including order of the dismissal passed by the respondent dated 24-3-2000 or in the alternative remit the matter to the respondent for fresh disposal of the enquiry after giving sufficient and reasonable opportunity to me in participating the enquiry through an advocate or Government Servant.

Counsel for the Petitioner: SMT.N.(P).ANJANA DEVI, SATYANARAYANA.

Counsel for the Respondent: MR.SRINIVAS DAMMALAPATI

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.1467 of 2000, dated 17.3.2003.

2. The petitioner was working as Junior Assistant in Zilla Parishad, Kakinada. While so, he was issued with a charge memo dated 30.8.1999, to which he submitted an explanation. Thereafter an enquiry appears to have been conducted and the petitioner sought for some time for hearing. But, however, without being any enquiry, findings were recorded by the Enquiry Officer and basing on the said findings, the respondent herein passed the impugned order dated 24.3.2000 dismissing the petitioner from service. Against the said order, the petitioner filed the present OA. The learned Tribunal, holding that the petitioner was given proper opportunity and the principles of natural justice have been followed, dismissed the above OA. Against the said order, the present Writ Petition has been filed.

3. The learned counsel for the petitioner before this Court submits that the procedure adopted by the respondent is wholly illegal and contrary to law. He submits that when a charge memo was issued, explanation was submitted and thereafter when an enquiry was sought to be conducted, he sought for time. However, the petitioner could not attend the enquiry on two occasions. The learned counsel for the petitioner would seriously contend that even in the absence of the petitioner in the enquiry, the duty is cast on the employer to conduct an *ex parte* enquiry and record the findings basing on the material available on record, and this aspect was not considered by the Tribunal, and therefore the action is said to be set at naught.

3. Mr.Dammalapati Srinivas, learned Standing Counsel appearing for the Zilla Parishad, submits that even prior to the framing of the charge itself, the petitioner admitted his guilt and even on 8.12.1998 when the enquiry was sought to be conducted, he did not appear and therefore the order of dismissal

cannot be said to be either illegal or contrary to law.

4. We are unable to accept the contention of the learned Standing Counsel. It is noticed from the documents that when the enquiry was sought to be conducted, the petitioner sought for documents on two occasions, but when the petitioner was absent, it doesn't preclude the authorities to proceed with the enquiry *ex parte* and held that the charges were proved. But in the instant case, without conducting such an enquiry, the Enquiry Officer held that the charge was proved on the ground that the petitioner was absent on the date when the enquiry was conducted. It is to be noted that the Enquiry Officer cannot record such a finding even in the *ex parte* enquiry also though the delinquent officer was absent. Under these circumstances, we are of the considered view that the order of the Tribunal as well as the order of dismissal passed by the respondent is not sustainable. Accordingly the order of the Tribunal and the order of dismissal dated 24.3.2000 is hereby set aside.

5. Since the petitioner was not given any opportunity and the enquiry was not conducted even *ex parte*, we direct the authorities to conduct a fresh enquiry in pursuance of the charge memo dated 30.8.1999. Even if the petitioner absents in the enquiry, it is open for the authorities to conduct *ex parte* enquiry and come to appropriate conclusions.

6. In view of the above, the Writ Petition is allowed and the matter is remitted back to the authority for conducting fresh enquiry. The petitioner shall be deemed to have been continued in service from the date of dismissal and he is entitled for subsistence allowance in accordance with the Rules. No costs.

(G.BIKSHAPATHY, J.)

28th February, 2005.

(P.S.NARAYANA, J.)

SSR

Rule Nisi is made absolute as above. Witnesseth Sri Devinder Gupta, Hon'ble the

Chief Justice on Monday, the 28th day of February, 2005.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chief Executive officer Zilla Parishad, Kakinada, East Godavari District.

2 The Registrar, A.P. Administrative Tribunal, Hyderabad.

3 2 CD copies.

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